

legislative finding that any of the rules whose force and effect has been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

"SECTION 5. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Section 2 of S.L. 1981, ch. 192 is compiled as § 67-5203.

Sections 100 and 102 of S.L. 1993, ch. 216 are compiled as §§ 67-2761 and 67-5203, respectively.

Sec. to sec. ref. This title is referred to in § 36-104.

This chapter is referred to in §§ 7-1206, 16-1626, 18-8002A, 19-5107, 20-223, 20-504, 22-103, 22-108, 22-434, 22-703A, 22-1103, 22-1104, 22-1108, 22-1213, 22-1403, 22-2205, 22-2540, 22-3114, 22-3402, 22-3409, 22-3419, 22-3421, 22-3424, 22-3813, 22-4603, 22-4604, 23-933, 23-1015, 23-1016, 23-1038, 23-1330, 23-1331, 25-225A, 25-613A, 25-614A, 25-618, 25-3520, 26-1101, 26-1809, 26-2249, 26-2805 — 26-2807, 25-1110, 26-1116, 26-1716, 26-2236, 26-2248, 26-2922, 26-2923, 26-2926, 28-46-306, 30-1447, 30-1518, 31-1506, 31-1509, 31-3411, 31-3505, 31-3518, 32-1008A, 32-1216, 33-105, 33-122, 33-1612, 33-2405, 33-2408, 33-3720, 36-104, 36-105, 36-1108, 36-1502, 36-2114, 36-2115, 37-2702, 37-2719, 37-2741, 38-210, 38-1222, 38-1306, 39-105, 39-107, 39-242, 39-311, 39-416 — 39-418, 39-605, 39-1118, 39-1212, 39-1306, 39-2002, 39-3610, 39-4120, 39-4404, 39-4405, 39-4413, 39-4801, 39-3903, 39-4904, 39-4908, 39-4909, 39-5209, [39-5312] 39-5212, 39-5813, 39-5814, 39-6002, 39-6611, 39-7411, 39-7420, 40-312, 40-1925, 41-211, 41-227, 41-239, 41-242, 41-282, 41-286, 41-322A, 41-1435, 41-2705, 41-2710, 41-3709, 41-3725, 41-3820, 41-4203, 41-4204, 41-4207, 41-4409, 41-4715, 41-4924A, 41-4925, 41-4945, 41-5111, 41-5211, 42-203D, 42-238, 42-603, 42-1605, 42-1607, 42-1701A, 42-1734, 42-1734D, 42-1737, 42-1762, 42-3803, 42-3909, 42-3914, 42-4003 — 42-4006, 42-4010, 42-4012, 44-2105, 44-2303, 46-1006, 47-324, 47-332, 47-718, 47-1318, 47-1320, 47-1505, 47-1513, 47-1706, 48-604, 49-201, 49-436, 49-1621, 49-2206, 54-204, 54-217, 54-222, 54-302A, 54-305, 54-521, 54-530, 54-608, 54-610, 54-611, 54-707, 54-817, 54-835, 54-912, 54-1009, 54-1117, 54-1220, 54-1404, 54-1510, 54-1612, 54-1614, 54-1717, 54-1726, 54-1806A, 54-1839, 54-1915, 54-1916, 54-2041, 54-2042, 54-2104, 54-2105, 54-2113, 54-2115, 54-2116, 54-2209, 54-2214, 54-2215, 54-2305, 54-2412, 54-2413, 54-2509, 54-2608, 54-2819, 54-2802, 54-2912, 54-3004, 54-3113, 54-3114, 54-3203, 54-3204, 54-3210, 54-3212, 54-3309, 54-3314,

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Sections 67-5201 — 67-5207 are referred to in § 47-1505.

This section is referred to in §§ 12-117, 26-2805 — 26-2807, 39-2404, 41-282, and 72-1333.

Cited in: Gary v. Nichols, 447 F. Supp. 320 (D. Idaho 1978); Higginson v. Westergard, 100 Idaho 687, 604 P.2d 51 (1979); Allen v. Lewis-Clark State College, 105 Idaho 447, 670 P.2d 854 (1983); City of Burley v. McCaslin Lumber Co., 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984); IHC Hosps. v. Board of Comm'rs, 108 Idaho 136, 697 P.2d 1150 (1985); Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985); Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n, 111 Idaho 331, 723 P.2d 875 (1986); Collins Bros. Corp. v. Dunn, 114 Idaho 600, 759 P.2d 891 (1988); Lowery v. Board of County Comm'rs, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988); South Fork Coalition v. Board of Comm'rs, 117 Idaho 857, 792 P.2d 882 (1990); Waggoner v. State, 121 Idaho 758, 828 P.2d 321 (Ct. App. 1991); City of Lava Hot Springs v. Campbell, 125 Idaho 768, 874 P.2d 579 (Ct. App. 1994).

ANALYSIS

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Agency.

A prison inmate may not appeal a parole decision of the Idaho Commission of Pardons and Parole under this section because the Commission, when making parole decisions, acts as a part of the Board of Corrections, and

is exempted from the definition of "agency" in the Administrative Procedures Act. *Carman v. State, Comm'n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

Under subdivision (1) of this section the Board of Corrections is not an "agency" within the meaning of the Administrative Procedures Act, and the judicial review provision in § 67-5215(a) does not apply to it. Therefore, there is no appeal to the district court from decisions of the Board of Corrections. *Carman v. State, Comm'n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

The Idaho Public Utilities Commission is a legislative agency not falling within the definition of a "state" agency as defined by subsection (1) of this section. *Owner-Operator Indep. Drivers Ass'n v. Idaho Pub. Util. Comm'n*, 125 Idaho 401, 871 P.2d 818 (1994).

Application.

—Dredge Mining Act.

Although the Dredge Mining Act did not provide for a hearing upon the imposition or change of rules and regulations by the board of land commissioners, permittees were not denied procedural due process since the adoption of rules and regulations would be covered by procedures set forth in this chapter. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

—Public Utilities Commission.

When the Public Utilities Commission is engaged in a legislative function, such as rate-setting for a cogenerator or small power producer, it need not act pursuant to the Administrative Procedures Act, but need only fulfill the notice requirements imposed on it by the public utility regulation statutes. *A.W. Brown Co. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992).

Constitutionality.

Both the Administrative Procedure Act and this section were created in the constitutionally mandated manner. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Contested Case.

The Department of Employment was not required or entitled to appeal the findings and recommendations of the Commission of Human Rights, since a hearing before the Commission on a sex discrimination claim, held before the Commission was granted authority to issue orders, was not a "contested case." *Hoppe v. Nichols*, 100 Idaho 133, 594 P.2d 643 (1979).

Decision of Board of County Commissioners denying hospital its right to any notices required to be given under the Idaho Medical Indigency Statutes, including notice of denial or notice of partial denial for county medical aid was not reviewable since it did not involve

a contested case. *Idaho Falls Consol. Hosps. v. Board of County Comm'rs*, 104 Idaho 628, 661 P.2d 1227 (1983).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by § 67-5212 since this section does not apply to the State Bar Board of Commissioners because they are a part of the judicial rather than the executive branch. *Dexter v. Idaho State Bd. of Comm'rs*, 116 Idaho 790, 780 P.2d 112 (1989).

Handbook Adopted Defectively.

Where an administrative agency's policy and procedures manual was not adopted pursuant to the procedural requirements of § 67-5203, the agency's handbook had to be construed as merely an internal guideline capable of being changed by an agency head when necessary, not having the force and effect of law, and since the manual did not have the force and effect of law, no cause of action could be based on its alleged violation. *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984).

Hearings by County Board.

Since the board of county commissioners is treated as an administrative agency for purposes of judicial review it should be treated in the same manner for hearings under this section. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Parole Hearings.

Section 20-223 in giving the commission of pardons and parole the power to promulgate rules and regulations in compliance with the Administrative Procedures Act (§§ 67-5201 — 67-5218) did not mandate that the procedural rights established in that Act be utilized in parole hearings; moreover, the definitional statement of the Act in subdivision (1) of this section specifically excludes the Board of Corrections from the requirements of the Act. *Balla v. Idaho State Bd. of Cors.*, 595 F. Supp. 1558 (D. Idaho 1984); *Balla v. Idaho State Bd. of Cors.*, 869 F.2d 461 (9th Cir. 1988).

Prison Administrative and Disciplinary Proceedings.

Prison administrative and disciplinary proceedings are subject neither to the Rules of Evidence nor the provisions of the Administrative Procedure Act; therefore, the process due in a prison classification hearing does not preclude hearsay evidence which the State Correctional Institution Classification Committee reasonably deems to be reliable. *Wolfe v. State*, 114 Idaho 659, 759 P.2d 950 (Ct. App. 1988).

Procedures.

Proceedings before the personnel commission and appeals therefrom to the district court must be considered exclusively under the personnel commission act and not under the administrative procedure act. *Swisher v. State Dep't of Envtl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977).

Purpose of Act.

One of the compelling reasons for the Idaho administrative procedure act was to require administrative agencies to make available information concerning their internal functionings. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

Review of Administrative Decisions.

The Administrative Procedure Act governs the standard of judicial review of an administrative decision. *Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc.*, 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Rules Distinguished from Laws.

While rules and regulations enacted by administrative agencies may be given the force and effect of law, they do not rise to the level of statutory law; only the legislature can make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The origin of rule making administrative capacity stems from a delegation from the legislature not a constitutional grant of power to the executive, and such rules or regulations promulgated thereunder are less than the equivalent of statutory law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Determinations of when a purported rule actually amounts to a re-defining of the original statutory directive will have to be determined on a case-by-case basis. *Tomorrow's Hope, Inc. v. Idaho Dep't of Health and Welfare*, — Idaho —, 864 P.2d 1130 (1993).

Term of What Is Not a Rule.

Where Health & Welfare's internal memo-

randum, construing direct care as meaning "hands-on" services only, did not affect a substantive change in direction from the agency's existing direct care policy nor was it fundamentally inconsistent with the agency's earlier accounting practices, the "hands-on" policy was a clarification of the regulatory term "direct care costs" rather than an attempt to re-define the statutory term "peculiar"; as such, the policy fell directly with the definition of what is not a rule under the terms of the 1986 amendment of this section and accordingly is not subject to the promulgation requirements of § 67-5203. *Tomorrow's Hope, Inc. v. Idaho Dep't of Health and Welfare*, — Idaho —, 864 P.2d 1130 (1993).

Statements Concerning Internal Management.

Subdivision (7) of this section does not provide for two types of rules, those that must be promulgated according to § 67-5203, and those that need not. Rather, subdivision (7) is a definitional term which provides that "statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public . . ." are not rules; not being rules, they do not have the force and effect of law, and a violation of them does not create a private cause of action. *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984).

Opinions of Attorney General. This act applies to contested cases; 18 month permanency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 USC 675(5), do not fall within the scope of "contested cases" as defined in the Administrative Procedure Act. OAG 88-9.

A conflict between federal and state law cannot be resolved by a rule or regulation, because a rule or regulation does not have the force and effect of law to amend or modify a provision of the Idaho Code. OAG 89-3.

67-5202. Office of administrative rules coordinator. — There is hereby established the office of administrative rules coordinator in the office of the state controller. The coordinator shall be a nonclassified employee and shall be appointed by the state controller with the advice and consent of the senate. The coordinator shall receive all notices and rules required in this chapter to be published in the bulletin or the administrative code. The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all agencies. The coordinator shall review all submitted rules for style, form, and numbering, and may return a rule that is not in proper style, form, or number. [I.C., § 67-5202, as added by 1992, ch. 263, § 2, p. 783; am. 1994, ch. 180, § 218, p. 420.]

Compiler's notes. Former § 67-5202 was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to

this section by § 218 of S.L. 1994, ch. 180 became effective January 2, 1995.

Sections 217 and 219 of S.L. 1994, ch. 180 are compiled as §§ 67-4917C and 67-5303, respectively.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

67-5202A. Numbering and format of rules. [Repealed.]

Compiler's notes. This section, which comprised 1965, ch. 273, § 2, p. 701; am.

1980, ch. 204, § 1, p. 468, was repealed by S.L. 1992, ch. 263, § 5, effective July 1, 1993.

67-5203. Publication of administrative bulletin. — (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published in the bulletin. The bulletin shall be published by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

- (a) all proclamations and executive orders of the governor;
- (b) agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and final rules, together with any explanatory material supplied by the agency;
- (c) all agency documents required by law to be published in the bulletin; and
- (d) any legislative documents affecting a final agency rule.

(5) The text of all documents published in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published in the bulletin.

(6) The coordinator shall provide a process for access to the contents of the bulletin and to the administrative code by electronic means. [I.C., § 67-5203, as added by 1992, ch. 263, § 3, p. 783; am. 1993, ch. 216, § 102, p. 853; am. 1993, ch. 245, § 1, p. 587; am. 1994, ch. 371, § 1, p. 1194.]

Compiler's notes. Former § 67-5203 was amended and redesignated as § 67-5221 by § 10 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 101 of S.L. 1993, ch. 216 is compiled as § 67-5201.

Section 2 of S.L. 1993, ch. 245 is compiled as § 67-5205.

Section 2 of S.L. 1994, ch. 371 is compiled as § 67-5205.
 Cross ref. Notice by mail, § 60-109A.

Sec. to sec. ref. This section is referred to in §§ 33-105, 36-104, 36-105, 67-454, and 67-5206.

67-5203A. [Amended and Redesignated.]

Compiler's notes. Former § 67-5203A was amended and redesignated as § 67-5229 by § 19 of S.L. 1992, ch. 263, effective July 1, 1993.

67-5204. Publication of administrative code. — (1) The administrative rules coordinator shall annually publish a publication to be known as the "Idaho Administrative Code."

(2) The administrative code shall be a codification of:

- (a) all proclamations and executive orders of the governor that have been published in the bulletin and have not been rescinded;
- (b) the text of all final rules;
- (c) any legislative documents affecting a final agency rule; and
- (d) all documents required by law to be published in the administrative code.

(3) The text of all documents published in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published in the administrative code. [I.C., § 67-5204, as added by 1992, ch. 263, § 4, p. 783; am. 1993, ch. 216, § 103, p. 587.]

Compiler's notes. Former § 67-5204, which comprised 1965, ch. 273, § 4, p. 701; 1978, ch. 255, § 2, p. 556, was repealed S.L. 1992, ch. 263, § 11, effective July 1, 1993.

Section 5 of S.L. 1992, ch. 263 contained a repeal.

Section 104 of S.L. 1993, ch. 216 is compiled as § 67-5206.

Sec. to sec. ref. This section is referred to in § 67-5206.

DECISIONS UNDER PRIOR LAW

Filing.

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office

a certified copy of each rule adopted by it as required by this section and must "publish" all effective rules adopted by it as required by I.C. § 67-5205. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

67-5205. Format — Costs — Distribution — Funds. — (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure at reasonable cost from the coordinator, individual printed pamphlet copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual copies of and subscriptions to the administrative code, the permanent supplements thereto and the

bulletin, for reprints and bound volumes thereof and for pamphlet rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state, and the number of copies which shall be distributed free for official use, in addition to those free copies required to be as provided in this section, shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state. Free copies shall be distributed by the coordinator, as follows:

- (a) One (1) to each county clerk for the use of the county law library.
- (b) One (1) each to the senate and the house of representatives.
- (c) One (1) to the attorney general.
- (d) One (1) to the legislative council.
- (e) One (1) each to the state universities and colleges, and one (1) to each community college.
- (f) One (1) to the state law library.
- (g) One (1) to the state library.
- (h) One (1) each to the following state depository libraries: Boise Public Library, East Bonner County Library, Idaho Falls Public Library, Lewiston City Library, Pocatello Library, Albertson College Library, Ricks College Library and Twin Falls Public Library.

In addition to those free copies required to be distributed by this section, the coordinator may distribute free copies for official use.

(3) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(4) There is hereby created in the state treasury the administrative code account. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and for providing electronic access, shall be deposited in the account. All agencies which have any material published in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of publication and distribution of such material. All moneys placed in the account are perpetually appropriated to the coordinator for the administration of the provisions of this chapter, and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

The coordinator shall allocate costs of production, publication and distribution to each participating agency in the same proportion that the amount of the costs of production, publication and distribution for that agency bears to the total costs of production, publication and distribution for all agencies,

with the costs to be determined on a per page basis. A cost per page may be imposed even though less than a full page of publication is required.

The cost allocations to each participating agency shall be made monthly by the coordinator, and each participating agency shall promptly pay into the administrative code account such costs. [I.C., § 67-5205, as added by 1992, ch. 263, § 6, p. 783; am. 1993, ch. 245, § 2, p. 853; am. 1994, ch. 371, § 2, p. 1194.]

Compiler's notes. Former § 67-5205, which comprised 1965, ch. 273, § 5, p. 701; am. 1980, ch. 78, § 1, p. 160; am. 1981, ch. 251, § 1, p. 541; am. 1983, ch. 86, § 1, p. 181; am. 1985, ch. 221, § 1, p. 533; am. 1986, ch. 105, § 1, p. 292, was repealed by S.L. 1992, ch. 263, § 20, effective July 1, 1993.

Section 5 of S.L. 1992, ch. 263 contained a repeal.

Sections 1 and 3 of S.L. 1993, ch. 245 are compiled as §§ 67-5203 and 67-5221, respectively.

Sections 1 and 3 of S.L. 1994, ch. 371 are compiled as §§ 67-5203 and 67-5221, respectively.

Sec. to sec. ref. This section is referred to in § 67-5218.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Instructions concerning administrative review.
Publication.

Instructions Concerning Administrative Review.

The public policy behind this statute should encourage administrative agencies to attach to all preliminary orders instructions concerning the available administrative review of those orders. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

Publication.

In satisfying its duty to publish its rules, an administrative agency must at least furnish state, district and county law libraries with complete sets of pertinent agency rules and regulations; if it fails to do so its rules and regulations are without force and effect. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to dismiss that appellants had not complied with agency regulations and exhausted its administrative remedy in view of factual issue regarding whether or not the agency's regulations had been published. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted by it as required by former law and must "publish" all effective rules adopted by it as required by this section. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

67-5206. Promulgation of rules implementing administrative procedure act. — (1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:

- (a) establish a uniform numbering system applicable to rules adopted by all agencies;
- (b) establish a uniform style and format applicable to rules adopted by all agencies;
- (c) establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;
- (d) establish a uniform indexing system for agency orders; and

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(e) include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.

(2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.

(3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:

- (a) the form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;
- (b) procedures for the creation of a record of comments received at any oral presentation;
- (c) the standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;
- (d) the form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
- (e) procedures to facilitate negotiated rulemaking;
- (f) the form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and
- (g) such other provisions as may be necessary or useful.

(4) In accordance with the rule making [rulemaking] requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5240 through 67-5255, Idaho Code. The rules shall specify:

- (a) form and content to be employed in giving notice of a contested case;
- (b) procedures and standards required for intervention in a contested case;
- (c) procedures for prehearing conferences;
- (d) format for pleadings, briefs, and motions;
- (e) the method by which service shall be made;
- (f) procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized by other provisions of law;
- (g) qualifications for persons seeking to act as a hearing officer;
- (h) qualifications for persons seeking to act as a representative for parties to contested cases;
- (i) procedures to facilitate informal settlement of matters;
- (j) procedures for placing ex parte contacts on the record; and
- (k) such other provisions as may be necessary or useful.

(5)(a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in effect on June 30, 1993, unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.

(b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances. [I.C., § 67-5206, as added by 1992, ch. 263, § 7, p. 783; am. 1993, ch. 216, § 104, p. 587.]

Compiler's notes. Former § 67-5206 was amended and redesignated as § 67-5230 by § 21 of S.L. 1992, ch. 263, effective July 1, 1993.

The bracketed word "rulemaking" in sub-

section (4) was inserted by the compiler.

Sections 103 and 105 of S.L. 1993, ch. 216 are compiled as §§ 67-5204 and 67-5221, respectively.

67-5207. Short title. — This chapter may be cited as the "Idaho Administrative Procedure Act." [I.C., § 67-5207, as added by 1992, ch. 263, § 8, p. 783.]

Compiler's notes. Former § 67-5207 was amended and redesignated as § 67-5278 by § 50 of S.L. 1992, ch. 263, effective July 1, 1993.

Section 9 of S.L. 1992, ch. 263 is compiled as § 67-5220.

67-5208 — 67-5219. [Reserved.]

Compiler's notes. Former §§ 67-5208 — 67-5210 were amended and redesignated as §§ 67-5232, 67-5242 and 67-5251, respectively by S.L. 1992, ch. 263, §§ 23, 26, and 36, respectively, effective July 1, 1993.

A former § 67-5211 which comprised 1965, ch. 273, § 11, p. 701, was repealed by S.L. 1992, ch. 263, § 29, effective July 1, 1993.

Former §§ 67-5212 — 67-5214 were amended and redesignated as §§ 67-5248, 67-5253 and 67-5254, respectively by S.L. 1992, ch. 263, §§ 33, 38, and 39 respectively, effective July 1, 1993.

A former § 67-5215 which comprised 1965, ch. 273, § 15, p. 701; am. 1991, ch. 248, § 1, p. 616, was repealed by S.L. 1992, ch. 263, § 41, effective July 1, 1993.

A former § 67-5216, which comprised 1965, ch. 273, § 16, p. 616, was repealed by S.L. 1992, ch. 263, § 41, effective July 1, 1993.

A former § 67-5217, which comprised 1969, ch. 48, § 1, p. 125; am. 1976, ch. 185, § 1, p. 671; am. 1980, ch. 212, § 3, p. 481, was repealed by S.L. 1992, ch. 263, § 52, effective July 1, 1993.

A former § 67-5218 was amended and redesignated as 67-5291 by S.L. 1992, ch. 263, § 53, effective July 1, 1993.

A former § 67-5219 was redesignated as § 67-5292 by S.L. 1992, ch. 263, § 54, effective July 1, 1993.

67-5220. Notice of intent to promulgate rules. — (1) An agency may publish in the bulletin a notice of intent to promulgate a rule. The notice shall contain a brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking, and shall include the purpose of the rule, the statutory authority for the rulemaking, citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking, and the principal issues involved. The notice shall identify an individual to whom comments on the proposal may be sent.

(2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged to proceed through such informal rulemaking whenever it is feasible to do so. [I.C., § 67-5220, as added by 1992, ch. 263, § 9, p. 783; am. 1994, ch. 271, § 1, p. 834.]

Compiler's notes. Section 8 of S.L. 1992, ch. 263 is compiled as § 67-5207.

Sec. to sec. ref. Sections 67-5220 through 67-5232 are referred to in § 67-5206.

67-5221. Public notice of proposed rulemaking. — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

- (a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;
- (b) a statement in nontechnical language of the substance of the proposed rule;
- (c) the text of the proposed rule prepared in legislative format;
- (d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- (e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
- (f) the manner in which persons may request an opportunity for an oral presentation as provided in section 67-5222, Idaho Code; and
- (g) the deadline for public comments on the proposed rule.

(2)(a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The form of the notice shall be substantially as follows: typefaces used shall measure greater than seven (7) points, and space width shall not be less than two (2) newspaper columns. The content of the notice shall be substantially as follows:

A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice. The notice shall include the agency name and address, rule number, rule subject matter as provided in paragraph (1)(b) of this section, and the comment deadline. A brief statement in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included.

(b) The coordinator shall cause the notice required in paragraph (a) of this subsection to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published. The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing these notices which will provide adequate exposure to the